

1 STACEY FULHORST, Executive Director
2 City of San Diego Ethics Commission
3 1010 Second Avenue, Suite 1530
4 San Diego, CA 92101
5 Telephone: (619) 533-3476
6 Facsimile: (619) 533-3448

7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2005-69
11)
12 TONY YOUNG,) **STIPULATION, DECISION, AND**
13) **ORDER**
Respondent.)
_____)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City's Election Campaign
20 Control Ordinance [ECCO].

21 2. At all times mentioned herein, Tony Young [Young] was a candidate for the Fourth
22 District City Council seat in the City of San Diego. The Tony Young for City Council
23 committee [Committee] is a campaign committee registered with the State of California
24 (Identification No. 1270661) established to support Young's candidacy in the November 2004
25 special election and the January 2005 special runoff election. At all relevant times herein, the
26 committee was controlled by Young within the meaning of the California Political Reform Act,
27 California Government Code section 82016. Young is referred to herein as "Respondent."

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1 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
2 next scheduled meeting, and the agreements contained herein are contingent upon the approval
3 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

4 4. This Stipulation resolves all factual and legal issues raised in this matter and arising
5 out of the audit of the Committee by the Ethics Commission without the necessity of holding an
6 administrative hearing to determine Respondent's liability.

7 5. Respondent understands and knowingly and voluntarily waives any and all
8 procedural rights under the SDMC, including, but not limited to, a determination of probable
9 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
10 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
11 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
12 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
13 to hold the City of San Diego harmless from any and all claims or damages resulting from the
14 Commission's investigation or this stipulated agreement, or any matter reasonably related
15 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
16 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
17 reference to each violation, and an order.

18 6. Respondent acknowledges that this Stipulation is not binding upon any other law
19 enforcement or government agency and does not preclude the Ethics Commission from referring
20 this matter to, cooperating with, or assisting any other law enforcement or government agency
21 with regard to this or any other related matter.

22 7. The parties agree that in the event the Ethics Commission refuses to accept this
23 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
24 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
25 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
26 because of prior consideration of this Stipulation.

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committee's checking account. In particular, SDMC section 27.2925(b)(8) states that records maintained by a committee must include the following:

for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check (if requested), the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

15. The Commission investigation revealed that the Respondent did not comply with the requirements of SDMC section 27.2925. In particular, Respondent did not retain copies of supportive documentation for payments made to several vendors.

Campaign Advertisements

16. At the time of the violations herein, SDMC section 27.2903 defined "mass mailing" as 200 or more substantially similar pieces of campaign literature sent within a single calendar month. In addition, SDMC section 27.2955 stated in part:

- (a) It is unlawful for any candidate or committee to send a mass mailing for the purpose of supporting or opposing a City candidate or City measure unless:
 - (1) the name, street address, and city of the candidate or committee sending the mailing are shown on the outside of each piece of mail in the mass mailing in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size; and
 - (2) each mailing includes the words "paid for by" immediately followed by the name, street address, and city of that candidate or committee in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

17. Respondent sent out sixteen mass mailings supporting his candidacy for City Council District 4. One of these mailings did not comply with ECCO in that it did not include any sender identification or "paid for by" disclosure. In addition, the disclosures that appeared on six other mailings did not comply with ECCO in that they appeared in six- to eight-point type size, instead of the requisite 12-point type size.

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Counts

Counts 1 and 2 - Violations of SDMC section 27.2945

18. Respondent failed to pay two vendors within ninety days as required by SDMC section 27.2945. Although Respondent agreed to pay April Goldstein a “win bonus” in the amount of \$20,000, Respondent did not pay this bill in full until June 30, 2006, approximately fifteen months late. In addition, although Respondent agreed to pay Myrtle Cole a “win bonus” of \$10,000, Respondent did not pay this bill in full until February 16, 2006, approximately ten months late.

Count 3 - Violations of SDMC section 27.2918

19. Respondent did not comply with the requirements of SDMC section 27.2918. In particular, individuals other than the candidate or the candidate’s campaign treasurer signed many of the Committee’s disbursement checks.

Count 4 - Violations of SDMC section 27.2925

20. Respondent did not maintain adequate accounting records as required by SDMC section 27.2925. In particular, Respondents did not did not retain copies of supportive documentation for payments made to several vendors.

Counts 5 through 11 - Violations of SDMC section 27.2955

21. Respondent failed to include the proper disclosures required by SDMC section 27.2955 on seven campaign mailings. In particular, one mailing did not include any sender identification or “paid for by” disclosure, while six other mailings included the disclosures in six- to eight-point type size instead of the requisite 12-point type size.

Factors in Aggravation

22. As discussed above, Respondent did not pay his campaign vendors within ninety calendar days as required by the City’s campaign laws. Instead, Respondent continued to solicit and accept contributions for approximately eighteen months after his election to office in order to pay his campaign debts. The practice of soliciting and accepting contributions long after an election, especially when the fundraisers and the contributors have business pending before the

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City, is contrary to public policy. In particular, it suggests that the fundraisers and contributors may be attempting to curry favor with an elected official.

23. Respondent was well aware of the provisions in ECCO regarding the payment of campaign debts. On November 18, 2004, the Ethics Commission wrote to all the candidates who participated in the November 16, 2004, special election (including Respondent) and reminded them of the City's ninety-day vendor debt law. In addition, the campaign treasurer reminded him that his campaign debts had to be paid within ninety days.

Factors in Mitigation

24. The special election for City Council District 4 was especially chaotic because it took place in a very short time period following the death of former Councilmember Charles Lewis. In addition, Respondent made several attempts to retain an experienced professional campaign treasurer for the 2004-2005 race, but San Diego's most experienced treasurers declined to handle Respondent's campaign until after the January 2005 special runoff election.

25. Although Respondent acknowledges responsibility for the Committee's campaign debts, at the time Respondent agreed to pay the win bonuses to his campaign staff, these staffers represented that they would engage in fundraising activities with a view toward collecting contributions that would pay for the win bonuses in a timely manner.

26. Respondent began working with his campaign staffers on fundraising activities with a view toward retiring his Committee's debts immediately after the January 2005 special runoff election. The Committee had made substantial progress paying its debts before the Committee representatives were contacted by the Ethics Commission.

27. Respondent fully cooperated with the Commission's investigation.

Conclusion

28. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

29. Respondent agrees to pay a fine in the amount of \$10,000 for violating SDMC sections 27.2918, 27.2925, 27.2945, and 27.2955. This amount must be paid no later than June 1, 2007, by check or money order made payable to the City Treasurer. Respondent

acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to the City Treasurer's Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

DATED: _____
STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: _____
TONY YOUNG, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____, 2007. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$10,000.

DATED: _____
Dorothy Leonard, Chair
SAN DIEGO ETHICS COMMISSION